

Application No.: 09/732,359

Docket No.: 99-961

REMARKS**I. Introduction**

Claims 1-38 are pending. Applicants note that the statement in the Office Action Summary attached to the Office Action that only claims 1-13 and 31-34 are pending is incorrect because Applicants have not cancelled claims 14-30 and 35-38. However, Applicants understand that claims 14-30 and 35-38 are withdrawn from consideration in lieu of the Examiner's Restriction Requirement dated July 16, 2004, and Applicants' subsequent election, with traverse, filed September 14, 2004, to prosecute claims 1-13 and 31-34. See MPEP § 821.01.¹

In the Office Action, claims 1-13 were allowed, and claims 31-34 were indicated to contain allowable subject matter, but were objected to as depending from a rejected base claim. Claim 31 was rejected under 35 U.S.C. § 102(e) as allegedly anticipated by U.S. 6,069,883 ("Ejzak"). Claim 31 was further rejected under 35 U.S.C. 103(a) as allegedly unpatentable over U.S. 6,597,705 ("Rezaiifar") in view of "Multi-Code CDMA Wireless Personal Communications Network" by I and Gitlin ("Multi-Code CDMA").

In the present paper, the Specification has been amended to correct typographical errors. Claim 31 has been amended solely to clarify the claim language, and no alteration in the scope or meaning of the claim is intended thereby. Claim 32 has been amended solely to correct a typographical error.

Applicants thank the Examiner for the indication of allowable subject matter. Further, Applicants respectfully traverse the rejection of claim 31.

II. Drawings

The Examiner incorrectly stated that "two *different* sets of drawings are filed with the application." (Office Action, page 2.) Applicants filed one set of drawings with the application, comprising two sheets including Figures 1 and 2. A copy of the drawings as originally filed is attached hereto as Exhibit A. Applicants have examined the second set of

¹ Applicants note that the Examiner has acknowledged that independent claim 31 is a generic claim, and that withdrawn claims 35-38 depend from claim 31. As Applicants noted in their September 14, 2004 response to the Examiner's Restriction Requirement, upon the allowance of a generic claim, Applicants will be entitled to consideration of claims to other species in addition to the elected species, provided that all claims to each additional species are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141.

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drawings referred to by the Examiner, a copy of which is attached hereto as Exhibit B, by downloading them from the PTO's PAIR website. Applicants note that these drawings appear to represent some kind of ear plugs, and clearly have nothing to do with the subject matter of the presently-claimed invention. These drawings were clearly incorrectly scanned and included in the Image File Wrapper for the present application. Applicants respectfully request the removal of the drawings attached hereto as Exhibit B from the file wrapper of the present application.

III. Section 102 Rejection

In the Office Action, the Examiner alleged that claim 31 is anticipated by Ejzak. For at least the reasons stated below, Applicants respectfully submit that this rejection should be withdrawn.

A. "limited overall power allocation"

Claim 31 recites "a limited overall power allocation available for each of the potential codes." The Examiner alleged that Ejzak anticipates this claim limitation "since power is determined for each user station." However, the Examiner has misread Ejzak, which contains no such teaching. Further, even if Ejzak did teach determining power for each user station, such a teaching would not read on the requirement in claim 31 of "a limited overall power allocation available for each of the potential codes."

The portion of Ejzak cited by the Examiner states that "the mobile station provides pilot strength measurements in the access request." (Ejzak, 9: 24-25.) Another portion of Ejzak, not mentioned by the Examiner, explains that

The access request 411 from the mobile station contains the data rate requested and the burst length requested. The maximum burst length that may be requested by mobile is specified by the system (and is chosen to best coordinate shared access between users). In addition, to provide interference information to the base station, the access request from the mobile includes pilot strength information, (for base stations of cells in its neighbor list, for example, MS1.1 would include pilot strength measurements on the base station of cells 110-160). (Note, the inclusion of the pilot strength measurements within the access request is independent of (and in addition to) any such reports used for handling soft handoffs.) The pilot strength measurements received from the mobile (e.g., MS1.1) indicate to the base station (e.g., BS1) the interference levels that that mobile would generate at neighboring base stations (e.g., BS2).

(Ejzak, 8: 18-33.) Thus, it is clear that Ejzak does *not* teach or suggest that "power is determined for each user station," as the Examiner asserted, but rather teaches user stations

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providing information to a base station about pilot strength measurements received from neighboring base stations.

Further, even if Ejzak did teach that “power is determined for each user station” such a teaching would not read on the requirement in claim 31 of “a limited overall power allocation available for each of the potential codes” because determining power for individual user stations is very different from “a limited overall power allocation.” There is no reason – and the Examiner has not suggested any – why the mere fact that the power of individual user stations is determined would imply or even suggest “a limited overall power allocation.”

Accordingly, for at least the foregoing reasons, claim 31 is patentable over Ejzak.

B. “admission control protocol”

Claim 31 recites “an admission protocol, the admission protocol maximizing the capacity utilization within the network with the limited overall power allocation, whereby the admission protocol may be used to admit users to the network.” The Examiner alleged that Ejzak anticipates this limitation by disclosing an “admission control function (see block 413 in figure 4) [that] performs the . . . step of maximizing capacity utilization within the network with the limited power budget as function 607 shown in figure 6 of function 707 shown in figure 7.” (Office Action, page 3.) However, Ejzak is directed toward the “allocation of increased bandwidth to a requesting mobile station” (Ejzak, Abstract). Nowhere does Ejzak teach or suggest an admission protocol “whereby the admission protocol may be used to admit the users to the network” as is recited in claim 31.

Ejzak’s block 413 is variously labeled “burst level admission control” (Fig. 4) and “switch access control” (Fig. 5), or is not labeled at all but follows block 411 labeled “data burst request” (Figs. 6 and 7). Block 413 is part of a process by which an “access controller coordinates a burst access of a mobile station (e.g., MS1.1) during soft handoff from a base station BS1 in cell 100 and a neighbor base station BS2 in cell 120.” (Ejzak, 9: 8-11.) In other words, Ejzak’s alleged “admission control function” cited by the Examiner is in fact part of a switching process for users that have already been admitted to a network. At most, Ejzak teaches determining whether a user can receive increased bandwidth. Claim 31, in contrast, requires an admission protocol that can be used to admit users to a network. In fact, Ejzak teaches away from the recited admission control protocol because Ejzak teaches managing network capacity after users are admitted to the network. Thus, one of ordinary

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skill would have had no reason to have considered network capacity upon admitting users to the network.

For at least the foregoing reasons, claim 31 is believed to be patentable over Ejzak.

IV. Section 103 Rejection

In the Office Action, the Examiner alleged that claim 31 is unpatentable over the combination of Rezaiifar and Multi-Code CDMA. However, Rezaiifar fails to teach or suggest several limitations of claim 31 as asserted by the Examiner, and therefore this rejection should be withdrawn.

A. "limited overall power allocation"

Claim 31 recites "a limited overall power allocation available for each of the potential codes." The Examiner asserts that Rezaiifar's Equation (4) (Rezaiifar, 7: 30) teaches this limitation. Equation (4) states that $P_i \leq P_{\max}$. Rezaiifar explains that "[u]nder equation (4), P_i corresponds to the transmit power by the i th mobile station." (Rezaiifar, 7: 45-46.) Further, Rezaiifar's P_{\max} clearly relates to the maximum possible transmit power for "the i th mobile station." Thus, Rezaiifar's Equation (4) has nothing to do with "a limited overall power allocation." Indeed, nowhere does Rezaiifar teach or suggest comparing P_i "with the total power" of a network, much less with "a limited overall power allocation available for each of the potential codes" as is required by claim 31.

For at least the foregoing reasons, claim 31 is patentable over the combination of Rezaiifar and Multi-Code CDMA.

B. "admission control protocol"

Claim 31 recites "an admission protocol, the admission protocol maximizing the capacity utilization within the network with the limited overall power allocation, whereby the admission protocol may be used to admit users to the network." The Examiner alleged that Rezaiifar teaches this limitation "as part of determining the maximum rate (1) which uses equation (4)." However, as noted above, Equation (4) does not teach or suggest the limited overall power allocation required by claim 31, and therefore Rezaiifar cannot teach or suggest the recited "admission protocol maximizing the capacity utilization within the network with the limited overall power allocation."

For at least the foregoing reasons, claim 31 is believed to be patentable over the combination of Rezaiifar and Multi-Code CDMA.

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CONCLUSION


Applicants respectfully submit that all pending claims presently being considered by the Examiner are distinguished over the cited prior art and are in condition for allowance. If the Examiner has any questions or issues relating to Applicants' response, he is encouraged to telephone the undersigned representative.

Any fees associated with the filing of this paper should be identified in an accompanying transmittal. However, if any additional fees are required in connection with the filing of this paper, permission is given to charge Deposit Account No. 07-2347, under order number 99-961, from which the undersigned is authorized to draw. To the extent necessary, a further petition for extension of time under 37 C.F.R. § 1.136 is hereby made, the fee for which should be charged to the foregoing deposit account number.

Respectfully submitted,

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By:


Joel Wall, Reg. No. 25,648
Attorney for Applicants
Verizon Corporate Services Group, Inc.
c/o Christian Andersen
600 Hidden Ridge
Mailcode HQE03H14
Irving, TX 75038
972-718-4800
Customer No. 32127